4. The analogy between treaty-making and legislation is striking when a congress agrees upon general principles which are afterwards accepted by a large number of states, as, for instance, in the case of the Geneva convention for improving the treatment of the wounded. Many political treaties containing “transitory” conventions, with reference to recognition, boundary, or cession, become, as it were, the title-deeds of the nations to which they relate.@@1 But the closest analogy of a treaty is to. a contract in private law, as will appear from the immediately following paragraphs.

5. The making of a valid treaty implies several re­

quisites. (1) It must be made between competent parties, *i.e.,* sovereign states. A “concordat,” to which the pope, as a spiritual authority, is one of the parties, is therefore not a treaty, nor is a convention between a state and an individual, nor a convention between the rulers of two states with reference to their private affairs. Semi­sovereign states, such as San Marino or Egypt, may make conventions upon topics within their limited competence. It was formerly alleged that an infidel state could not be a party to a treaty. The question where the treaty­making power resides in a given state is answered by the municipal law of that state. It usually resides in the executive, though sometimes, as in the United States, it is shared by the legislature, or by a branch of it. (2) There must be an expression of agreement. This is not (as in private law) rendered voidable by duress ; *e.g.,* the cession of a province, though extorted by overwhelming force, is nevertheless unimpeachable. Duress to the individual negotiator would, however, vitiate the effect of his signa­ture. (3) From the nature of the case, the agreement of states, other than those the government of which is auto­cratic, must be signified by means of agents, whose authority is either express, as in the case of plenipoten­tiaries, or implied, as in the case of, *e.g.,* military and naval commanders for matters, such as truces, capitulations, and cartels, which are necessarily confided to their discretion. When an agent acts in excess of his implied authority he is said to make no treaty, but a mere “sponsion,” which, unless adopted by his Government, does not bind it, *e.g.,* the affair of the Caudine Forks (Livy, ix. 5) and the con­vention of Closter Seven in 1757. (4) Unlike a contract

in private law, a treaty, even though made in pursuance of a full power, is, according to modern views, of no effect till it is ratified. (5) No special form is necessary for a treaty, which in theory may be made without writing. It need not even appear on the face of it to be a contract between the parties, but may take the form of a joint declaration, or of an exchange of notes. Latin was at one time the language usually employed in treaties, and con­tinued to be so employed to a late date by the emperor and the pope. Treaties to which several European powers of different nationalities are parties are now usually drawn up in French (the use of which became general in the time of Louis XIV.), but the final act of the congress of Vienna contains a protest against the use of this language being considered obligatory. A great European treaty usually commences “ In the name of the Most Holy and Indivisible Trinity,” or, if the Porte is a party, “ In the name of Almighty God.” (6) It is sometimes said that a treaty must have a lawful object, but the danger of accepting such a statement is apparent from the use which has been made of it by writers who deny the validity of any cession of national territory, or even go so far as to lay down, with Fiore, that “ all should be regarded as void which are in any way opposed to the development of the free activity of a nation, or which hinder the exercise of its natural rights.” (7) The making of a treaty is some­

times accompanied by acts intended to secure its better performance. The taking of oaths, the assigning of “ con­servatores pacis,” and the giving of hostages are now obsolete, but revenue is mortgaged, territory is pledged, and treaties of guarantee are entered into for this purpose.

6. A “ transitory convention ” operates at once, leaving no duties to be subsequently performed, but with reference to conventions of other kinds questions arise as to the duration of the obligation created by them, in other words, as to the moment at which those obligations come to an end. This may occur by the dissolution of one of the contracting states, by the object-matter of the agreement ceasing to exist, by full performance, by performance be­coming impossible, by lapse of the time for which the agree­ment was made, by *contrarius consensus* or mutual release, by “ denunciation ” by one party under a power reserved in the treaty. By a breach on either side the treaty usually becomes, not void, but voidable. A further cause of the termination of treaty obligations is a total change of circumstances, since a clause “rebus sic stantibus” is said to be a tacit condition in every treaty.@@2 Such a conten­tion can only be very cautiously admitted. It has been put forward by Russia in justification of her repudiation of the clauses of the treaty of Paris neutralizing the Black Sea, and of her engagements as to Batoum contained in the treaty of Berlin. The London protocol of 1871, with a view to prevent such abuses, lays down, perhaps a little too broadly, “ that it is an essential principle of the law of nations that no power can liberate itself from the engagements of a treaty, nor modify the stipulations thereof, unless with the consent of the contracting powers, by means of an amicable arrangement.” Treaties are in most cases suspended, if not terminated, by the outbreak of a war between the contracting parties, and are therefore usually revived in express terms in the treaty of peace.

7. The rules for the interpretation of treaties are not so different from those applicable to contracts in private law as to need here a separate discussion.

8. Collections of treaties are either (i.) general or (ii.) national.

(i.) The first to publish a general collection of treaties was Leibnitz, whose *Codex Juris Gentium,* containing documents from 1097 to 1497, “ea quæ sola inter liberos populos legum sunt loco,” appeared in 1693, and was followed in 1700 by the *Mantissa.* The *Corps Universel Diplomatique du Droit des Gens* of Dumont, con­tinued by Barbeyrac and Rousset in thirteen folio volumes, con­taining treaties from 315 A.D. to 1730, was published in 1726-39. Wenck’s *Corpus Juris Gentium Recentissimi,* 3 vols. 8vo, 1781-95, contains treaties from 1735 to 1772. The 8vo *Recueil* of G. F. de Martens, continued by C. de Martens, Saalfeld, Murhard, Samwer, Hopf, and Stoerk, commenced in 1791 with treaties of 1761, and is still in progress. The series in 1887 extended to sixty-four volumes. See also the following periodical publications:—*Das Staatsarchiv, Sammlung der officiellen Actenstücke zur Geschichte der Gegenwart,* Leipsic, commencing in 1861; *Archives Diplo­matiques,* Stuttgart, since 1821 ; *Archives Diplomatiques, Recueil Mensuel de Diplomatie et d' Histoire,* Paris, since 1861 ; and Herts- let’s *British and Foreign State Papers, from the termination of the War of 1814 to the latest period, compiled at the Foreign Office by the Librarian and Keeper of the Rapers,* London, since 1819, and still in progress.

(ii.) The more important collections of national treaties are those of Μ. Neumann and Μ. de Plassan for Austria, 1855-84; Beutner for the German empire, 1883; Calvo for “l’Amérique Latine,” 1862-69 ; De Clercq for France, 1864-86 ; De Garcia de la Vega for Belgium, 1850-83 ; Lagemans for the Netherlands, 1858-82 ; Soutzo for Greece, 1858 ; Count Solar de la Marguerite for Sardinia, 1836-61 ; De Castro for Portugal, 1856-79 ; Rydberg for Sweden, 1877 ; Kaiser (1861) and Eichmann (1885) for Switzer­land ; Baron de Testa (1864-82) and Aristarchi Bey (1873-74) for Turkey ; F. de Martens for Russia, 1874-85 ; Mayers for China, 1877. The official publication for Italy begins in 1864, for Spain in 1843, for Denmark in 1874. The treaties of Japan were pub­lished by authority in 1884. Those of the United States are con­tained in the *Statutes at Larae* of the United States, and in the

*@@@1 Cf.* Sir Edward Hertslet’s very useful collection entitled *The Map of Europe by Treaty,* 1875.

*@@@2 Cf.* Bynkershoek, *Quæst. Jur. Pub.,* ii. c. 10.